

An E D I C T in the Roman Law :

In the 25. Book of the Digests, Title 4. Section 10.

As concerning the visiting of a

Big-Bellied Woman,

And the looking after what may be

Born by Her.

The Pretor says thus ;

§ 10. De inspiciendo ventre, custodien-
doque partu, sic Pretor ait : ' Si mulier
mortuo marito pregnantem se esse dicet,
his ad quos ea res pertinebit, procuratori-
ve eorum, his in mense denunciandum
curet, ut mittant, si velint, quæ ventrem
inspiciant. Mittantur (autem) mulieres
liberæ duntaxat quinque : hæque simul
omnes inspiciant : Dum ne quæ earum,
dum inspiciat, invita muliere ventrem
tangat. Mulier in domu honestissime
feminae pariet, quam ego, confutoam.
Mulier ante dies triginta, quam paritu-
ram se esse putat, desuoclet his ad quos
ea res pertinet, procuratoribusve eorum,
ut mittant, si velint, qui ventrem custo-
diant. In quo conclavi mulier partura
erit, ibi ne plures aditus sine quam unum
fuerint, ex utraque parte tabulis præsi-
gantur. Ante ostium ejus conclavis li-
beri tres, & tres liberæ cum binis comi-
tibus custodiant. Quotiescunque ea mu-
lier in id conclave, aliudve quod, sine in-
balneo cum ibit, custodes, si volent, id an-
te præsidant : & eos qui introierint, ex-
cutiant. Custodes qui ante condare po-
tuit erunt, si volent, omnes, qui concla-
ve aut domum introierint, excutiant. Mu-
lier, cum parturire incipiat, his ad quos

' If a Woman upon her Husband's death
' pretends that she is with Child, she must in-
' volve this matter every Month thereafter, to
' those who are the most concerned in it, or to
' their Proxies, that so they may send some, if
' they think fit, to visit her Belly. They may
' send any Free Women (i.e. not Slaves) to the
' number of five at most ; and all these together
' may visit her, provided that while they do so,
' none of them may touch her Belly, without her
' leave : She shall be lodged in the House of some
' Woman of an unsinuated Reputation, such as
' shall be named by the Pretor : and she shall
' signify to the Persons concerned, or to their
' Proxies thirty days before, when she expects
' to be delivered, that if they think fit, they
' may send such as they will to watch over her : The
' Room in which she is to be brought to Bed,
' shall be visited, that there may be no other
' Entries to it but One : and if there are any
' others, they must be taken up with
' Boards laid along both within and without :
' And at the Door of this Bed-Chamber three
' Free Men with as many Free Women and two
' Servants may be set to watch : as if any of the
' Women think fit to go into that Bed-Cham-
' ber, or into any other, or into a Bath, which
' those keepers may visit, if they think fit, before
' she goes into it, and may also see all that go

ea res pertinet, procuratoribusve eorum denunciet, ut mittant quibus presentibus pariat. Mittantur mulieres liberæ dantur taxat quinque; ita ut, præter obstetrices duas, in eo conclavi ne plures mulieres liberæ sint, quam decem, ancillæ quam sex. Hæ, quæ intus futuræ erunt, excutiantur omnes in eo conclavi, ne quæ prægnans sit. Tria lumina, ne minus, ibi sint: scilicet, quia teuebræ ad subijciendum aptiores sunt. Quod natum erit, his ad quod ea res pertinet, procuratoribusve eorum, ostendatur. Apud eam educatur, apud quem parens iusserit. Si autem ne his parens iusserit, aut is, apud quem voluerit educari, curam non recipiet, apud quem educetur, causa cognita constituam. Is, apud quem educabitur quod natum erit, quoad trium mensium sit, bis in mense ex eo tempore; quoad sex mensum sit, semel in mense; a sex mensibus quoad anniculus fiat, alternis mensibus; ab anniculo quoad fari possit, semel in sex mensibus, ubi volet, ostendat. Si cui ventrem inspicere, custodirive, adesse parturientem non erit, factumque quid erit, quomodo ea ita fiant, uti supra comprehensum est. Ei, quod natum erit, possessionem causa cognita non dabo; siue quod natum erit, ut supra cautum est, inspicere non licebit. Quas itaque actiones me sacrum polliceor his, quibus ex Edicto meo Bonorum possessio data sit eas, si mihi iusta causa videbitur esse, ei non dabo.

heredy provided, when upon the hearing of the matter that is made out, that which is done, is not to be admitted to the possession of the Estate; if it be found that the Child has not been visited, according to the former regulations; in which case the *Prætor* promises to give over all *Æres* and *Tutelas* to those others, whom according to his Edict he has put in Possession; and not to the Child that is so born, the Justice of the cause being first made out to him.

§ 11. Quamvis sit manifestissimum Edictum *Prætoris*, attamen non est negligenda interpretatio ejus. § 12. Denunciare igitur mulierem oportet his scilicet; quorum interest partum non edi, vel totam habituram hereditatem, vel partem ejus, siue ab intestato, siue ex Testamento. § 13. Sed & si servus hæres institutus fuerit, si nemo alius sit. Aristo scribit, his quoque servo,

into it at that time; and those Keepers may also, if they think fit, search all such as come within the House or the Bed-chamber. When the Woman falls in Labour, she shall give notice of it to those concerned, or to their Proxies; that so they may send such Persons who may be Witnesses to the Birth; who must be Free Women, to the number of five at most; and besides the Two Midwives, there must be no more Free Women in the Bed-chamber, than Ten; nor more Servants than Six. All these who enter within the Bed-chamber, shall be visited in the Room, to see if any of them is with Child; nor must there be fewer, than three Lights in the Room, because an Imposture may be more easily committed in the dark. That which is born, shall be shewed to those who are concerned; or to their Proxies, if they desire it. The Infant is to be kept by him who is named by the Father for that intent; but if he has left no Orders concerning it, or if he who was named by him, will not undertake it, the *Prætor* having examined the matter, shall name the Person to whose keeping the Child is to be trusted; whose name shall be published, and he shall be obliged to shew him, as he thinks fit twice a Month, till he is three Months old, and after that once a Month, till he is six Months old, and once in two Months, till he is a year old; and from thence once in six Months, till he can speak. But if any will not suffer their Beloved, nor admit of Witnesses to their delivery, or if any thing is done for hindring the execution of those things that are

11. Altho' the *Prætor's* Edict is very express, yet the Explanation of it is not to be passed over. 12. The Woman is bound to intimate her being with Child, to all those who are concerned in it, and to all others to whom either the whole Inheritance or a part of it belongs either by the succession in the course of Law, or by the Will of the Dead. 13. And even if a Slave is made Heir by his Will, there being no Child, Aristo thinks, quam

quodamvis non omnia, quædam tamen circa partum custodiendum arbitrio Prætoris esse concedenda. Quam sententiam puto veram; publicæ enim interest, partus non subici: ut ordinem dignitas, familiarumque salva sit. Ideoque etiam servus iste, cum sit in spe constitutus successione, qualis qualis sit, debet audiri, rem & publicam & suam gerens.

Should be heard, how mean soever his condition may be, since the Publick is concerned in that which he looks after, as well as he is as to his own particular.

§ 14. Denunciari oportet his, quos proxima spes successione contingit; ut puta primo gradu hæredi instituto; non etiam substituto; & si intestatus pater-familias sit, his, qui primum locum ab intestato teneant: si vero plures sint simul successuri, omnibus denunciandum est. § 15. Quod autem Prætor ait, causa cognita se possessionem non daturum, vel actiones denegaturum, eo pertinet, ut si per rusticitatem aliquid fuerit omissum ex his, quæ prætor servari voluit, non obstat partui. Quale est enim, si quid ex his, quæ leviter observanda Prætor edixit, non sit factum, partui denegari bonorum possessionem? Sed mos Regionis inspicendus est, & secundum eum & observari ventrem, & partum, & infantem oportet.

Should be denied to the Child? But a regard is to be had to the Custom of the Country; and according to that, both the Big-Belly, the Birth, and the Child, are to be visited and watched over.

It seems that the Abuse provided against by this Law, was known among the Athenians; for it is set forth among their other Disorders by Aristophanes, in the following words.

Aristophanes in his The Smerphnia says

“I knew another Woman, who said that she was in Labour, and pretended to have had her Pains for the space of ten days, till she had bought a Child; mean while the Husband was running about to all places, buying those Remedies that hastened Labour. But an Old Woman brought in a Pot a Child to her, the Mouth of which she had shut up carefully with Wax, that so it might not cry out; and as soon as she had made a Sign to the Woman, intimating what she had brought to her, she then pretended to be in Labour, cried out to her Husband, Get you gone, get you gone, Husband; for I am now upon the point to be brought to bed, and I feel the Child, kicking with his Heels ready to break out. Upon this he in great joy withdrew, and presently the Old Woman pluck’d out of the Child’s mouth that Wax with which she had stopp’d it: upon which that cursed Woman that had brought in the Child run out with great joy to the Husband, and said, You have a Son, born that looks like a Lynx, like a Lynx; and that is your very Image in all things. — What follows, is too immodest to be translated.

*Concerning the Interpretation of Laws, and that they ought to be expounded not strictly by the Words or Cases put in them, but by the Equity and Reason of them, Cicero writes, *lib. 2. de Inventione.**

Causæ

Causa & rationes afferentur, quare & quo consilio, sit ita in lege: ut sententia & voluntate scriptoris, non ipsa solum scriptura causa, confirmatum esse videatur. — Legis Scriptorem, certo ex ordine, Iudices certa aetate praedictos, constituisse; ut essent non qui scriptum num recitarent, quod quivis puer facere posset, sed qui cogitationem assequi possent, & voluntatem interpretari. — Nullam rem neque legibus, neque scriptura ulla, donique ne in terminis quidem quotidiano atque imperiis domesticis, recte posse administrari si unusquisque velit verba spectare, & non ad voluntatem ejus qui verba habuerit accedere. Iudex is videtur legi obtemperare, qui sententiam ejus, non qui Scripturam sequatur. — Leges in concilio scriptoris, & utilitate communi, non in verbis consistere. — Idcirco de hac re nihil esse scriptum, quod cum de illa esset scriptum, de hac is qui scribebat, dubitaturum neminem judicabat. Postea multis in legibus, multa esse praeterita, quae idcirco praeterita nemo arbitretur, quod ex ceteris de quibus scriptum sit, intelligi possint.

The greatest part of his Oration for Caelina, is in these words are remarkable.

Cum voluntas, & consilium, & sententia interdicti, intelligatur, impudentiam summam, aut stultitiam singularem putabimus in verborum errore versari, rem & causam & utilitatem communem non relinquere solum, sed etiam prodere. — Juris igitur retineri sententiam, & aequitatem plurimum valere, oportere, an verbo ac litera jus omne torqueri, vos statuete utrum utilius esse videatur?

FIN

Let the Grounds and Reasons be shew'd, that it may appear upon what design the Law was so and so made; that so it may appear what is en-
 acted not only from the words of the Law, but from the will and design of the Law-giver. — The Law-givers have ordained Judges to be cho-
 sen out of a certain rank of Men, and of a deter-
 mined age, that so there might be Persons ap-
 pointed, who should not only repeat the Letter of the Law, which any Child may do, but should be able to find out the design of the Law-giver, and explain it according to his will. — If one will only have regard to the Words, and not to the Mind of him that uttered them, it will not be possible to order matters aright, neither by Law, nor by any sort of Writing, nor indeed by any sort of Discourse; and this will appear in the whole business of the World, and even in Do-
 mestic Matters. — That Judge obeys the Law more, who pursues the design of it, than he who has regard only to the words of it. Laws consist not in the words in which they are conceived, but in the intent of the Makers of them; and are to be explained by the good of the Publick for which they are made. Nothing is specified in the Law concerning such a case, because the Law-giver, who mentioned another case in the Law, could not but conclude, that the one being express'd, no body could doubt of the other. For after all, there are many cases that seem to be omitted in many Laws, which yet we ought not to think omitted; because we may easily see what we ought to think of them from those cases that are mentioned in the Law.

inna, is to the same purpose; and among many others,

When we once comprehend the Reasons, the Design, and the Intent of a Law, it is either great Impudence, or great Folly, to let our selves be misled by any ambiguity in the words; for this is not only to forsake but to betray the true Ends of the Law, and the good of the Publick. — Do you therefore that are the Judges consider which is best: Whether the Design of the Law ought to be observed, and to be explained according to E-
 quity, or whether Justice it self ought to be per-
 verbed by adhering to the Words and Letter of the Law.

I N I S.